IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1506 of 2007

Suguna .. Petitioner

Vs

1. The State of Tamil Nadu,
   rep. by its Secretary to Govt.,
   Prohibition and Excise Department
   Fort St. George, Chennai.

2. The Commissioner of Police
   Greater Chennai, Egmore, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.K.Selvakumaran

For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, mother of the detenu by name Rajesh, who has been incarcerated at Central Prison, Chennai, challenges the order of detention passed by the second respondent in Memo No.373/BDFGISSV/2007 dated 24.9.2007 under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, has filed this petition seeking to call for the records of the second respondent

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relating to the order of detention, referred to above, to quash the same and to direct the respondents to produce her son, the detenu, before this Court and set him at liberty forthwith.

2.1. The impugned order of detention dated 24.9.2007 was passed on the basis of ground case in Crime No.353 of 2007 on the file of M-1 Madhavaram Police Station for alleged commission of offences under Sections 395 r/w 397 and 506(2) IPC, complaint of which was lodged by one Jothi. According to the complainant, on 11.8.2007 at about 12.30 hours, when he was proceeding in his motor cycle, the detenu along with four others wrongfully restrained him and at the knife point, took away Rs.1,100/- and removed the gold ring. When the complainant raised alarm, the accused rushed to stab himand in the melee, the complainant suffered injury on his right hand. Noticing the atrocious activities, the public came to his rescue and tried to apprehend the accused, who picked up soda bottles and hurled against the public, thus resulting the dislocation of traffic and creating terror in the minds of the public. However, the complainant with the help of the public, apprehended two accused persons while the others escaped from the spot. During the course of investigation, the detenu and others were arrested and produced before Judicial Magistrate, Thiruvotriyur for judicial custody.

2.2. The second respondent, taking note of the above ground case and finding that there are two adverse cases under Section 379 IPC, one on the file of M-2 MM Colony Police Station Crime No.133/2007 and the other on the file of M-1 Madhavaram Police Station Cr.No.203 of 2007, having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention branding him as a Goonda.

3. The learned counsel for the petitioner placing reliance on the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], contends that the two adverse cases, referred to above, relate to the offence punishable under Section 379 I.P.C., and therefore, the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention and hence, the impugned order of detention suffers on the ground of non-application of mind on the part of the detaining authority.

4. We have heard learned Additional Public Prosecutor on the above said point.

5. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982.

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6.1. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

6.2. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

7. Admittedly, in the instant case, the adverse cases relate to the offence of theft punishable under Section 379 IPC and the ground case relates to the offence of robbery punishable under Section 395 r/w 397 IPC and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

8. Applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention, Accordingly, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be released forthwith, unless he is required in any other case.

sra

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary,
   Govt. of Tamil Nadu,
   Prohibition and Excise Department
   Fort St. George, Chennai.

2. The Commissioner of Police
   Greater Chennai, Egmore, Chennai.

3. The Superintendent
   Central Prison,Puzhal, Chennai.
   (Induplicate for Communication to Detenue)

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law & Order)
   Fort St.George,
   Chennai-9.

TS(CO)
DCP/7.1 HCP No.1506 of 2007

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